
TITLE 465 DEPARTMENT OF CHILD SERVICES

**Administrative Rules Oversight Committee Notice
60 Day Requirement ([IC 4-22-2-19](#))
LSA Document #10-417**

March 1, 2011

Senator R. Michael Young, Chair
Administrative Rules Oversight Committee
c/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Attn: Sarah Burkman

Re: LSA Document #10-417 – Proposed Rule Regarding Rate Setting for Child Placing Agencies

Dear Senator Young:

On behalf of the Indiana Department of Child Services (DCS), I am submitting this notice to the Administrative Rules Oversight Committee in compliance with [IC 4-22-2-19](#), which requires an agency to begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule, with certain exceptions not applicable to this notice.

This Proposed Rule establishes a procedure for setting per diem rates and other payments to foster homes licensed by DCS under [IC 31-27-4](#) through child placing agencies licensed under [IC 31-27-6](#), and administrative payments that DCS makes to the child placing agencies for services provided to foster children placed in the homes that they supervise, on behalf of children for whom DCS is responsible for foster care under a juvenile court case, and who are placed in the home with approval of a DCS local office.

There is no statute that specifically requires or authorizes DCS to adopt an administrative rule concerning per diem and other payments to licensed foster homes or child placing agencies for care and supervision of children placed in foster care through those agencies. Indiana Code 31-25-2-7(a)(8) provides that DCS is responsible for "administering foster care services". Rules necessary to carry out the department's statutory duties under [IC 31-25](#) are authorized by [IC 31-25-2-18](#). Those statutory provisions were added to Title 31 by P.L.145-2006, effective July 1, 2006.

On January 1, 2009, the state of Indiana, through DCS, assumed fiscal responsibility for child welfare services expenditures, including payments for child placing agency foster care placements that were previously funded by county property tax levies. The payment rates in effect at that time reflected inconsistencies among counties in their approaches to rate setting, resulting in a wide variation in rates across the state that were paid to the agencies for the same or similar foster care placements. The rates being paid were not necessarily based on the reasonable cost of care allowable under Title IV-E of the Social Security Act for federal reimbursement of the major portion of payments made for IV-E eligible children. DCS did not have uniform statewide contracts with child placing agencies that include procedures for setting payment rates. In 2009 DCS undertook to establish rates for those agencies by contracts that would result in greater uniformity in relation to actual costs for the services provided and payments to their foster homes, effective January 1, 2010. Nearly all the foster homes supervised by child placing agencies are licensed as special needs or therapeutic foster homes under [IC 31-27-4](#) and the applicable DCS rules.

A lawsuit was filed in U.S. District Court by the Indiana Association of Residential Child Caring Agencies (IARCCA), asserting that the proposed new contracts and rates for payments by DCS to child placing agencies did not comply with the foster care maintenance payment requirements of Title IV-E. In issuing a preliminary injunction in January 2010 that has temporarily halted any change in the agency payment rates effective in 2009, the court stated that DCS should adopt a rule to establish a methodology for determining the appropriate amount of foster care home and administrative payments based on the Title IV-E cost components, including operational costs allowable and reasonable under applicable federal and state rules or policies. DCS is complying with that decision through this Proposed Rule.

The Notice of Intent to Adopt this [a] Rule was posted to the Indiana Register on June 23, 2010. The Proposed Rule was posted on August 25, 2010. DCS held a public hearing on the Proposed Rule on September

24, 2010, at which many interested persons appeared and submitted written and oral statements regarding the contents of the Proposed Rule. A subsequent public hearing was held on November 15, 2010, at which a few additional statements were submitted. DCS has considered and prepared written responses to the comments or statements it received at or following the public hearings and has made several amendments to the Proposed Rule that will be incorporated in the Final Rule.

Settlement negotiations ensued with IARCCA concerning the contents of the Proposed Rule, which have resulted in an agreement to the contents of the Final Rule. DCS is now ready to proceed with adoption of this rule as a Final Rule, together with the related rule concerning foster homes supervised directly by DCS, subject to final approval by the Attorney General and Governor as provided under [IC 4-22-2](#). Payment rates and amounts established under this rule will be effective no earlier than January 1, 2012.

If you need additional information concerning this subject, please do not hesitate to contact me at (317) 233-6547 or by e-mail as shown below.

Sincerely,

John Wood
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Department of Child Services
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cc: Indiana Register
James W. Payne, Director, DCS
Jeffrey M. Lozer, General Counsel, DCS

Posted: 03/09/2011 by Legislative Services Agency
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